Supreme Court, U. S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

~~79-1095~~

OCTOBER TERM, 1979

No. _____

Varsted C. Jizmejian,.....Petitioner

V.

Department of the
Air Force,..... Respondent

PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Varsted C. Jizmejian
1425 Leith Avenue
Waukegan, Illinois 60085

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STATUTES

Title 42 USCA § 659 32,33

IN THE

SUPREME COURT OF THE UNITED STATES

NO_____

Varsted C. Jizmejian..... Petitioner

v.

Department of the Air Force...Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner, Varsted C. Jizmejian, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourt Circuit entered in this case on October 26, 1979.

OPINION

A copy of the unpublished opinion of the Court of Appeals in this cause is appended hereto as Appendix 1.

JURISDICTION

The jurisdiction of this court is

invoked because of the denial of Due Process of Law and the opportunity to rise an adequate defense. The judgment sought to be reviewed was entered on October 26, 1979. Title 28 USCA 1254(1) confers upon this court the jurisdiction Writ of Certiorari.

QUESTION PRESENTED FOR REVIEW

1. Whether 42 USCA § 659 was intended to modify or override all other United States Constitutional provisions and Statutes.
2. Whether it is Constitutional to force a defendant into a foreign forum.
3. Whether a divorce decree is an automatic judgment for arrears of alimony.
4. Whether Federal Courts have jurisdiction in cases of denial of Due Process of Law when divorce related.
5. Whether 42 USCA § 659 is impartial and affords equal protection to all parties.
6. Whether judgments entered by

courts without Due Process of Law are valid because they appear to be valid on its face.

STATUTES INVOLVED

The Statutes imvolved in this case is 42 U.S.C.A. § 659, applicable paragraphs are quoted in District Court judgment Appendix pages 34,35.

STATEMENT

1. Both the District Court and the Fourth Circuit Court of Appeals have taken the position that there is no defense against 42 USCA § 659, in a federal court as long as there is a judgment which appears valid on its face, even though in fact and in law the judgment may be a mere nullity.

2. Both the District Court and the Fourth Circuit Court of Appeals seem to be of the opinion that the Petitioner must travel to Arizona in order to defend himself.

3. The court's position is that one does not have to be notified or served with process for a judgment for arrears

of alimony. The divorce decree is sufficient.

4. The Federal Court's position has been one of reluctance to inquiry into the jurisdiction of the court which rendered the judgment for the divorce decree.

5. The Court has ruled that if the court that issues the decree says it is a valid judgment its considered valid on its face and the Air Force(United States) isn't required to contest it.

6. A judgment was rendered on 21 September, 1978 by the District Court against the Petitioner for failure to state a claim upon which relief can be granted. This was affirmed by the Fourth Circuit Court of Appeals on 26 October 1979.

ARGUMENT

1. The Petitioner's claim in this matter is violations of "Due Process of Law" and "Equal Protection of the Law." The Court's position is that 42 USCA § 659 leaves the government with no

choice but to honor garnishment writs and that if any Constitutional rights were violated by the state governments the individual must go to the State for remedy as the United States and the Federal Courts cannot take any action in these matters. This is contrary to the many rulings of the Supreme Court as stated in the following cases;

MARBURY v. MADISON, 1 Cranch 137

The very essance of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

The government of the United States has been emphatically termed a governmant of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violations of a vested right.

The judicial power of the United States is extended to <u>all cases arising under the Constitution</u>.

It is also not entirely unworthly of observation, that in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

Thus, the particular phaseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void; and that courts, as well as other departments, are bound by that instrument.

BIGELOW v. OLD DOMINION COPPER CO.
225 U.S. 8

The Constitutional requirement that full faith and credit be given in each state to the public acts, records and judicial proceedings of every other State is necessarily to be interpreted in connection with other provisions of the Constitu-

tion, and therefore no State can obtain in the tribunals of other jurisdiction full faith and credit for its judicial proceedings if they are wanting in the Due Process of Law enjoined by the fundamental law.

SCOTT v. McNEAL, 154 U.S. 34

The words "due process of law," when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this court, "mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution--that is, by the law of its creation--to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service

<u>of process within the State</u>, or his voluntary appearance." Pennoyer v. Neff, 95 U.S. 714, 733.

HOVEY v. ELLIOTT, 167 U.S. 409

"The principle stated in this terse language lies at the foundation of all well-ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. <u>A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal..... Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject-matter.</u>

42 USCA § 659 merely places the government in a position to be subject in like manner and to same extend as if it were a private person, to legal process brought for enforcement of legal obligations to provide child support or make alimony payments. It makes no mention of modifying or overriding Constitutional provisions or other Statutes.

The protection of Constitutional rights as stated by the Supreme Court rests with all courts.

United States Supreme Court Digest
Key 1/2 Constitutional Law

U.S. Pa. 1821. The Constitution of the United States was made for the whole people of the nation and is equally binding upon all courts and citizens.

U.S. Neb. 1941. The federal Constitution is the "Supreme Law of the Land." and the obligation to guard and enforce every right secured by that Constitution rests on the State Courts equally with the Federal Courts.

Every individual should be afforded the equal protection of the law and be given the protection of his day in court.

TRUAX v. CORRIGAN, 257 U.S. 312,322

> This brings us to consider the effect in this case of that provision of the Fourteenth Amendment which forbids a State to deny to any person the equal protection of the laws. The clause is associated in the Amendment with the due process clause and it is customary to consider them together. It may be that they overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are coterminus. The due process clause, brought down from Magna Charta, was found in the early state constitutions, and later in the Fifth Amendment to the Federal Constitution as a limitation upon the executive, legislative and judicial powers of the Federal Government, while the equality clause does not appear in the Fifth Amendment and so does

not apply to congressional legislation. The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty property and immunities under the protection of the general rules which govern society.

COOPER v. NEWELL, 173 U.S. 555

It must be remembered that this action was commenced by Newell a citizen of New York against a citizen of Texas, in the exercise of a right secured to him by the Constitution of the United States, and it would go far to defeat that right if it should be held that he was cut off in the Circuit Court from proving that he was not a citizen and resident of Texas when the controverted action was commenced, and

that he had not authorized any attorney to appear for him in that action.

The Arizona Courts have repeatedly violated my constitutional rights, in that:

1. I was called to the stand as a defendant by the palintiff and cross examined before I was examined and than, when I started to give my testimony, due to the late hour , the court wanted to continue the following day, however, the attorney for the plaintiff informed the court that he would be unable to appear and the attorney for the defendant said the same so the court stated words to the effect "wrap it up ask him another question." I did not get to finish the question I was asked nor was I afforded the opportunity to finish my testimony.

BRADY v. MARYLAND, 373 U.S. 83

"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of

the good faith or bad faith of the prosecution.

The state court's reluctance to continue the trial, thereby curtailing petitioner's testimony was the equivalent of suppression of evidence.

2. The court divided property as community property which was not within the jurisdiction of the Arizona Court, contrary to the rulings of the United States Supreme Court and the Arizona Supreme Court.

BROWN v. FLETCHER"S ESTATE,
210 U.S. 82

Every State has exclusively jurisdiction over the property within its borders. Overby v. Gordon, 177 U.S. 214. We make this extract from the opinion of Mr. Justice White in that case. p. 222;

"To quote the language of Mr. Chief Justice Marshall, in Rose v. Himley, 4 Cranch, 241, 277; "I is repugnant to every idea of a proceeding in rem to act against a thing which is not in the power of the sovereign under whose authority the court

proceeds; and no nation will admit that its property whould be absolutely changed, while remaining in its own possession, by a sentence which is entirely ex parte."

One of these principles is, that <u>every State possess exclusive jurisdiction and sovereignity over persons and property within its territory</u>..... The other principle of public law referred to follows from the one mentioned; that is, that <u>no State can exercise direct jurisdiction and authority over persons or property without its territory</u>.

Story, Confl. Laws, c.2; Wheat. Int. pt.2, c.2.

GROVER & BARBER SEW. MACH. CO. v.
RADCLIFFE, 137 U.S. 287

A law which substitutes constructive for actual notice is binding upon persons domiciled within the State where such law prevails, and as respects the property of others there situated, <u>but can bind neither person nor property beyond its limits</u>. This rule is based upon

international law, and upon that natural protection which every country owes to its citizens. It concedes the jurisdiction of the court to the extent of the State where the judgment is rendered, but upon the principle that it would be unjust to its own citizens to give effect to the judgments of a foreign tribunal against them when they had no opportunity of being heard, its validity is denied.

FREEMAN v. ALDERSON, 119 U.S. 185

If the nonresident possesses no property in the State, there is nothing upon which its tribunals can act. Pennoyer v. Neff, 95 U.S. 714, 723. They cannot determine the validity of any demand beyond that which is satisfied by the property. For any further adjudication, the defendant must be personally served with citation or voluntarily appear in the action. The laws of the State have no operation outside of its territory, except so far as may be allowed by comity; its

tribunals cannot send their citation beyond its limits and require parties there domiciled to respond to proceedings against them; and publication of citation within the State cannot create any greater obligation upon them to appear. Ib. page 727.

MALICH v. MALICH, 204 P. 1020

The two lots in San Diego were not awarded because they were not within the jurisdiction of the court.

3. The court awarded a judgment for arrears of alimony which the United States honored, for which I was neither served, appeared, or heard. This is contrary to the principles of due process of law and Supreme Court rulings.

KNOWLES v. GASLIGHT & COKE CO., 86 U.S. 58

In our opinion the defendant had a right to show by proof that he had never been served with process, and that the circuit court of Cass County never acquired jurisdiction of his person. As this was refused him onthe ground that the evidence

was inadmissible, the judgment must be reversed.

COOPER v. NEWELL, 173 U.S. 555

It is well settled that in an action brought in our courts on a judgment of a court of a sister State the jurisdiction of the court to render the judgment may be assailed by proof that the defendant was not served and did not appear in the action, or where an appearance was entered by an attorney, that appearance was unauthorized, and this even where proof directly contradicts the record.

The following are Arizona Supreme Court rulings in this matter:

NATIONAL METAL CO. v. GREENE CONSOL. COPPERCO. 89 P. 535

But where there is no service there is no notice, irrespective of any knowledge which the defendant may acquire informally. Notice is given only by service of process. Informal knowledge will not supply it, and can not be relied upon to

put the one acquring the knowledge upon notice or to force him into court to defend himself .... Still further: "No court can exercise, at common law, jurisdiction over a party unless he is served with the process within the territorial jurisdiction of the court or voluntarily appears." Mex. Cent. R.R. Co. v. Pinkney, 149 U.S. 209.

LORE v. CITIZENS BANK OF WINSLOW, 75 U.S. 371

It being admitted that there was no service of process and no appearance by the defendant, the judgment was absolutely void. The defendant was entitled to his day in court on the merits of the case and could not be condemned in judgment without such hearing or an opportunity to be heard.

FIRST NAT"L BANK v. POMONA MACH., 486 P.2d 184

The rule in Arizona is that there must be personal service within the State to support personam jurisdiction and judgment.

The District Court's position on arrears of alimony is that one does not have to be served with process, in order to have a valid judgment. This is contrary to the rulings of the Supreme Court, reference:

GRIFFIN v. GRIFFIN, 327 U.S. 220

> Judgment for arrears of alimony without actual notice to or appearance by the petitioner, and without any form of service of process..... to extent that petitioner was deprived of an opportunity to raise defense..... there was a want of judicial due process, and hence want of that jurisdiction over the person of petitioner prerequiste to the rendition of judgment in personam against him.

See also Harris v. Hardman, 55 U.S. 334; Hollingsworth v. Barbour, 29 U.S. 466.

The Fourth Circuit Court of Appeals stated in it's opinion that the judgment (Support Decree) is valid on it's face and that the Air Force(United States) is not required to contest it. The petitioner is not asking that the United

States to contest this action. The petitioner is asking the court, for the right to open inquiry into the validity of the claim against him in a neutral court, where legal equality would be available to both parties in accordance with well established principles of justice. As a matter of interest, it is noted that the United States has in the past removed cases of this nature to federal courts when rights of individuals were violated. Samples v. Samples, 414 F.Supp. 773; Crane v. Crane, 417 F.Supp. 38; Evans v. Evans, 429 F.Supp. 580.

THOMPSON v. WHITMAN, 85 U.S. 457

> But this does not prevent an inquiry into the jurisdiction of the court in which the original judgment was given, to pronounce it, or the right of the State itself to exercise authority over the person or subject-matter.

SLAUGHTER HOUSE CASE, 83 U.S. 36

> Life, liberty, and property are forbidden to be taken "without due process of law," and "equal pro-

tection of the law," is guaranteed to all.

The District Court in its judgment pointedly notes that:

1. The petitioner was served with process in Nevada. This is admitted, however, it should be noted that the summons stated:

"You are hereby summoned and required to appear and defend..... judgment by default will be rendered against you."

Since this was served by an officer of the law and after consulting with attorney, who advised petitioner that ne better come to Arizona and defend, as he would have no grounds to defend after judgment, left the petitioner with no choice, but to journey to Arizona and defend.

PENNOYER v. NEFF, 95 U.S. 714

"Process from the tribunal of one State cannot run into another State, and Summon parties there domcilied to leave its territory and respond to proceedings against them. (P.727)

The deception and deceit of the wording of the summons should be given consideration by the court in it's determination thatpetitioner gave jurisdiction by appearing in the Arizona Court.

2. The petitioner by asking for a new trial and appealing Arizona Court decision gave Arizona jurisdiction.

The petitioner was unware that a new trial had been asked for,until 1976 when court documents where obtained. If the petitioner did gave Arizona Court jurisdiction by the above acts, than the court was obligated to give him equal protection of the law as required by the Fourteenth Amendment of the United States Constitution, which was denied when he was required to take the stand and be cross-examined before he was examined and than cut-off on his testimony due to the late hour.

3. The petitioner did not challenge Arizona Court's jurisdiction to award divorce decree.

The petitioner from the very begining wanted his attorney to challenge the jurisdiction of the court. He was

advised that he had been served and court had jurisdiction. Immediately at the close of the trial petitioner asked his attorney tc not only challenge the Arizona Court's jurisdiction but to protest the curtailment of his testimony and the fact that he was required to take the stand as a defendant and be cross examined before being examined. His attorney not only did not appeal as requested, he had an another attorney handle the appeal without the petitioner's knowledge.

42 USCA § 659 contravenes and circumvents the "Due Process Clause" and the "Equal Protection Clause" as it only permits the wife to sue the United States for child support/alimony thereby depriving the husband of legal equality and deprivation of the second section of the Fourth Article of the Constitution which provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. Ward v. Maryland, 79 U.S. 418; Orr v. Orr, 440 U.S. 268.

CONCLUSION

The United States by placing itself in the States of Arizona as a private person, forces the petitioner into a foreign forum in an alien status, leaving him in a precarious and vulnerable position in which to attempt to raise an adquate defense. This is a violation of individual rights and is repugnant to the United States Constitution.

The Federal Court's position is that since petitioner went to Arizona to defend his divorce action and supposedly gave Arizona Court jurisdiction, he now must go to Arizona to defend this garnishment action.

The Court should take the following into consideration in it determination of this matter:

1. Petitioner is not and never has been an Arizona resident.

2. The petitioner went to Arizona to defend the divorce action because he was led to believe he had to go there. Reference page 21 of this brief.

3. When the petitioner did go to Arizona, the trial court abused its

discretion when it compelled petitioner (than defendant) to take the stand and be cross examined before being examined and than curtailed his testimony due to the late hour, divided property which was not within the jurisdiction of the court, awarded a judgment for arrears of alimony for which the petitioner neither was served, appeared or was heard. All of which as stated in quoted authority listed in brief is a denial of "Due Process of Law" and "Equal Protection of Law."

The federal court's refusal to entertain this action is because of it being divorce related. The matter before the court is one of a constitutional dimension and not of one of divorce.

The petitioner is asking this court to enjoin the United States from forcing him into a foreign forum and to enjoin the State of Arizona from using a judgment which is wanting in "Due Process of Law."

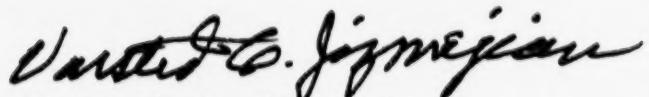
SIMON v. SOUTHERN R.R., 236 U.S. 115

While Par. 720 prohibits United States courts from "staying pro-

ceedings in a State Court," it does not prevent them from depriving a party of the fruits of fraudulent judgment, nor prevent the Federal Courts from enjoining a party from using that which he calls a judgment but which is, in fact and in law, a mere nullity ..... and if a United States Court can enjoin a plaintiff from using a judgment, proved to be fraudulent, it can like wise enjoin him from using a judgment absolutely void for want of service.

For the reasons set forth, it is respectfully submitted that this Petition for Writ of Certiorari to review the judgment of the Fourth Circuit Court of Appeals be granted.

Respectfully submitted,



Varsted C. Jizmejian
1425 Leith Avenue
Waukegan, Illinois, 60085

APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 78-1845

Varsted C. Jizmejian Appellant,

verus

Department of the Air Force Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Sol Blatt, Jr., District Judge

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Argued October 4, 1979
Decided October 26, 1979

Before HAYNSWORTH, Chief Judge, BRYAN, Senior Circuit Judge, and SPROUSE, Circuit Judge

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Varsted C. Jizmejian for Appellant; Robert Varnum, Civil Division, Dept. of Justice (Barbara Allen Babcock,

Assistant Attorney General; Thomas E. Lydon, United States Attorney; Ronald R. Glancz, Appellate Staff, Civil Division, Dept. of Justice on brief) for Appellee.

PER CURIAM:

Plaintiff's Air Force retirement pay has been garnished in order to satisfy a support decree of the Arizona courts. Plaintiff has sued the Air Force, arguing that the support decree is invalid and therefore should not be recognized for purposes of garnishment. The judgment, however, is valid on its face, and the Air Force is not required to contest it. See 42 U.S.C. § 659.
Moreover, this court is not empowered to assess plaintiff's due process contentions in this regard. See Overman v. United States, 563 F.2d 1287 (8th Cir. 1977); Calhoun v. United States, 557 F.2d 401 (4th Cir. 1977) Plaintiff's remedy lies elsewhere. The district court's dismissal for failure to state a claim upon which relief can be granted is affirmed.

AFFIRMED

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Varsted C. Jizmejian, Plaintiff v. Department of the Air Force Defendant	Civil Action No. 77-2171 O R D E R

Plaintiff commenced this action to require the defendant to pay to him certain amounts being withheld from his military retirement pay, claiming jurisdiction under 28 U.S.C. § 1332 -- (diversity of citizenship).[1] The defendant answered and filed a motion to dismiss on the grounds of lack of jurisdiction--(F.R.C.P. 12(b)(1)) -- and failure to state a cause of action -- (F.R.C.P. 12(b)(6)).

1 The pleadings of both parties perhaps adhere too closely to the F.R.C.P. 8 requirement of a short and concise state-

A brief statement of the history of plaintiff's involvement with the State of Arizona courts, giving rise to the present action, is essential to an understanding of the issue here. Plaintiff, now a retired colonel in the United States Air Force, was married in Illinois in 1947 and was recalled into the Air Force in 1951, due to the Korean Conflict. Apparently, plaintiff remained in the service for several years and served this country in Vietnam during the conflict there. Returning from Vietnam in 1964, plaintiff asked to be assigned to an Air Force Base in Arizona where he lived with his wife until domestic difficulties impelled him to move out of a rented off-base house in the spring of 1967. Between 1967 and 1971, the plaintiff retired from the Air Force, and had apparently moved to Nevada by June 5, 1970, since on that date he was personally served in Las Vegas with a copy of

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ment of the facts involved; many of the details outlined above were uncovered at the hearing held in this matter on August 16, 1978.

a summons and complaint in a divorce action commenced by his wife in the Superior Court of the State of Arizona (County of Pima). It is this divorce action which forms the nucleus of the present controversy. Plaintiff apparently appeared either personally or by counsel in the Arizona divorce trial because the record reflects that he moved for a new trial at the conclusion of the proceedings.[2]

On appeal to the Arizona Court of Appeals, plaintiff asserted that no grounds for divorce had been proven, that the alimony award was too high, and that the trial court's division of property was erroneous. Pointedly, apparently plaintiff did not challenge the jurisdiction of the trial court to grant the divorce decree. On appeal, the Arizona Court upheld the divorce decree and ali-

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2 This fact is taken from the appellate opinion of the Arizona Court of Appeals. There is no indication from the record that plaintiff appealed this intermediate appellate decree to the Arizona Supreme Court.

mony award of $300.00 per month but reversed the division of property award, finding that the matrimonial domicile was never established in Arizona; that the law of the state of matrimonial domicile at the time of acquisition of movables governed; and that under applicable law -- (Illinois) -- plaintiff's wife had no claim to plaintiff's checking accounts or insurance policies. Based on the decree, as modified on appeal, plaintiff's wife moved to enforce the judgment as to alimony against plaintiff; however, by the time the trial court decree was affirmed, plaintiff was not in Arizona. Plaintiff's wife secured various writs of garnishment to the defendant Air Force on plaintiff's retirement pay and, on April 29, 1977, plaintiff was adjudged in contempt of the Arizona Superior Court decree which ordered that the arrearages on the alimony payments be reduced to judgment in the amount of $17,700.00 plus interest. Plaintiff began this action on November 3, 1977, with the filing of his summons and complaint challenging the withholding by the Air Force of a portion

of his retirement pay.

The court notes as a preliminary matter that although plaintiff, acting pro se here, alleged jurisdiction based on diversity, which is improper in an action against the United States, 28 U.S.C. § 1331 is the proper jurisdictional basis and plaintiff's incorrect designation of his jurisdictional basis does not warrant a F.R.C.P. 12(b)(1) dismissal. See, Fort Sumter Tours v. Andrus, 440 F.Supp. 914, 918 n. 1 (D.S.C. 1977) aff'd. 564 F.2d 1119, 1123 n.4 (4th Cir. 1977); therefore, defendant's motion to dismiss on this ground is denied.

Defendant's second ground for dismissal, i.e., a F.R.C.P. 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, presents more serious problems. The motion is based on 42 U.S.C. § 659 which provides in relevant part:

> **"(a) Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States, or the**

District of Columbia (including any agency, sub-division, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligation to provide child support or make alimony payments.

* * * * * *

(f) Neither the United States, any disbursing officer, nor government entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section."

As can be seen from the above quoted subsections, the United States has waived its sovereign immunity tc a limited extent to provide for enforcment of state writs of garnishment against the United States as garnishee, when the garnish-

ment arises out of a decree providing for child support or alimony payments. The defendant, relying on these sections, has filed with this court certified copies of the Arizona Court of Appeals opinion, writs of garnishment issued to the United States, and the Order of the Superior Court of Pima County, Arizona, holding plaintiff in contempt for failure to meet his court-imposed alimony duties[3], and defendant has moved to have the action dismissed under the protective language of § 659(f). It is clear that if the monies being withheld from plaintiff by the United States are the result of "legal process regular on its face" arising out of an alimony decree, the United States is entitled to a judgment in this court.

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3. Since this court found it necessary to require the production of the above documents and others, it necessarily converted the defendant's F.R.C.P. 12(b)(6) motion to a F.R.C.P. 56 motion for summary judgment, and gave the parties time to supplement the record as required by F.R.C.P. 12(b).

Plaintiff, in pro se brief rivaling in competency and comprehensiveness memoranda filed in this courtby many members of the licensed bar, has earnestly argued -- (with abundant case authority) -- that a judgment rendered by a state court, which court does not have jurisdiction of the subject matter or of the person, is without efficacy in other states, and such judgment is not entitled to full faith and credit under the Constitution.[4] With this principle the court fully agrees; however, the facts of this case prevent application of that established doctrine here. The record which this court must accept at face value in this proceeding reflects that plaintiff was personally served in Nevada with a copy of the Arizona summons

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4. It is well settled that United States District Courts are bound to give valid foreign state judgments the same faith and credit that the courts of one state are bound to give judgments of a sister state. Cooper v. Newell, 173 U.S. 555, 567 (1899).

and complaint in the divorce action; that he appeared and contested that action -- (since he moved for a new trial, which was denied); that he appealed the lower court Order to the Arizona Court of Appeals; and that he won a partial reversal.[5] Significantly,

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5. Plaintiff cites Lore v. Citizens Bank of Winslow, 75 P.2d 371 (Sup.Ct. Arizona 1938), for the proposition that an appearance by a party after judgment is rendered against him without service of process and personal jurisdiction will not cure a want of jurisdiction as to the judgment previously obtained. However, in that case, the party not served had merely stipulated to a continuance of supplemental proceedings until he could move to challenge jurisdiction and had not, as plaintiff apparently did here, involved himself so fully in the state trial and appellate processes. However, this court does not express any opinion on the issue of plaintiff's consent to jurisdiction beyond its opinion that jurisdiction appears "regular on the face" of the state decision.

plaintiff apparently did not raise any jurisdictional question in any of the state proceedings, and the April, 1977, state contempt decree expressly states, "The court finds that it still has jurisdiction over the subject matter and the persons." This court cannot ignore these repeated indications that the Arizona state courts had (1) subject matter jurisdiction of the marriage -- (by virtue of plaintiff's wife's Arizona domicil after separation) -- to allow the divorce decree to be rendered, and (2) personal jurisdiction over plaintiff to render the alimony decree proper.[6]

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6 The basis for personal jurisdiction over plaintiff for the purpose of awarding alimony against him is not apparent from the Arizona Court of Appeals opinion. It is possible that the court assumed sub silentio that, by appearing in the trial -- (or at least by moving for a new trial) -- the plaintiff consented to jurisdiction This is the general rule -- (See, 27B CJS divorce § 247). It is doubtful that an attempt to limit plaintiff's participation at trial to a "special appearance" could on this record prevail. Cf., Nocher v. Nocher, 268 S.C. 504, 234 S.E.2d 884

Not withstanding the able and articulate citation of authority in plaintiff's brief in opposition to defendant's motion, this court is persuaded that 42 U.S.C. § 659(f) insulates the United States from this suit. A recent federal appellate opinion Overman v. United States, 563 F. 2d 1287 (8th Cir. 1977), supports this court's conclusion. In Overman, the plaintiff, who alleged that a state divorce and support decree was fraudulently procured against him, sought to enjoin the Veterans Administration from disbursing a part of his

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(1977) -- [husband's attempt under an alleged special appearance to challenge the sufficiency of wife's pleadings in divorce action rendered him subject to state court general jurisdiction]. In any event, the record here does not reflect any attemped special appearance.

To the extent that the Arizona Court of Appeals indicated that personal jurisdiction existed over plaintiff on any other basis, its reasoning is curious to say the least. Since the court concluded that the parties never acquired a matrimonial domicile in Arizona and

salary pursuant to a writ of garnishment. The court rejected the challenge stating:

> "Moreover, we will not readily infer that Congress intended to permit federal agencies to be dragged in as defendants by any federal employee who, unhappy with a prior state adjudiction, seeks to contest it by suing the government over wage garnishment rather than challenging the divorce decree in an appropriate state forum." at 1293.

In this Circuit, our Court of Appeals is extremely solicitious of the

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plaintiff never had a separate domicile there which would allow plaintiff's separate property to be divided in the Arizona divorce action under Arizona's community properly law, it would seem to follow that alimony could not be awarded on the basis of plaintiff's domicile, since that domicile never existed in Arizona. However, the court did allow the alimony award to stand while striking the property division. The only consistent explanation for this is that the court found that plaintiff had consented by appearance

rights of pro se prisoner litigants to the point that district courts are required to "advise" prisoners how to rectify deficiencies in their federal causes of action. (See, Gordon v. Leeks, 574 F.2d 1147 (#77-1137, 4th Cir. 3/6/78). Keeping this in mind, this court is certain that the appellate tribunal would not object to this court advising the non-prisoner pro se military veteran here involved that, in its opinion, his only

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to a personal judgment against him, but that under the Law of Illinois, which was the parties' last matrimonial domicile -- (although plaintiff's wife was then separately domiciled in Arizona) -- ownership of the movables in question -- (checking accounts and insurance policies) -- were plaintiff's separate property. Thus, it was not bedause of a lack of jurisdiction that plaintiff secured a reversal on the movables question, but due to the choice of law rules of Arizona recognizing that Illinois law was applicable to the ownership of movables. In any event, the underlying basis for the Arizona Court's ruling is for Arizona, not this court, to explicate; on its face, the appellate court decree is valid.

possible successful method of attack on the Arizona alimony decree must take place in the Arizona state courts; however, from a reading of this record, such a course appears to be one that will require extraordinary "maneuvers" for a successful "campaign."

For the foregoing reasons, this court grants defendant's motion for summary judgment and the instant action is hereby dismissed.

AND IT IS SO ORDERED.

/S/ Sol Blatt, Jr.

Sol Blatt, Jr.
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
September 21, 1978